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MACH II AVIATION, INC. & ESCAPE VELOCITY OF TAMPA BAY, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GOODMAN BALL, INC.,  
Plaintiff,

Case No. 3:07-cv-01148-BZ

**DEFENDANTS' MOTION TO STRIKE  
PLAINTIFF'S UNAUTHORIZED SUR-  
REPLY**

v.

MACH II AVIATION, INC., and ESCAPE  
VELOCITY OF TAMPA BAY, INC.,

**The Honorable Bernard Zimmerman  
No Hearing Scheduled**

Defendants.

/

1                   **MEMORANDUM AND POINTS OF AUTHORITY**

2                   Defendants, Mach II Aviation, Inc. (“Mach II”) and Escape Velocity of Tampa Bay, Inc.  
3 (“Escape Velocity”) (together, “Defendants”), file this Motion to Strike Plaintiff, Goodman Ball,  
4 Inc.’s (“GBI”), Unauthorized Sur-Reply.

5                   **I.        BACKGROUND**

6                   On December 3, 2008, GBI filed a Motion to Reopen the Case. (Doc. 84). On January 6,  
7 2009, the Court granted GBI’s motion. (Doc. 85). On May 1, 2009, Defendants filed their  
8 Motion for Relief from Order Granting Plaintiff’s Motion to Reopen Case. (Doc. 96). GBI filed  
9 its Opposition on May 15, 2009. (Doc. 102). On May 29, 2009, Defendants filed their Reply to  
10 GBI’s Opposition to Defendants’ Motion for Relief from Order Granting Plaintiff’s Motion to  
11 Reopen Case. (Doc. 106). On June 4, 2009, GBI filed its Request for Leave to File Sur-Reply,  
12 attaching the Sur-Reply as Exhibit A. (Doc. 106).

13                  **II.      ARGUMENT**

14                  Civil Local Rule 7-3(d) provides that “once a reply is filed, no additional memoranda,  
15 papers or letters may be filed without prior Court approval.” Defendants filed their Reply on  
16 May 29, 2009, and GBI filed its Request for Leave to File Sur-Reply on June 4, 2009. By  
17 attaching the Sur-Reply as an exhibit to GBI’s Request for Leave to File Sur-Reply, GBI filed  
18 additional memoranda without first obtaining Court approval. Accordingly, GBI violated Civil  
19 Local Rule 7-3(d).

### III. CONCLUSION

Defendants respectfully request that this Court strike GBI's Sur-Reply attached as Exhibit A to GBI's Request for Leave to File Sur-Reply.

Respectfully submitted,  
SHUTTS & BOWEN LLP

/S/Janelle A. Weber  
Janelle A. Weber

## **PROPOSED ORDER**

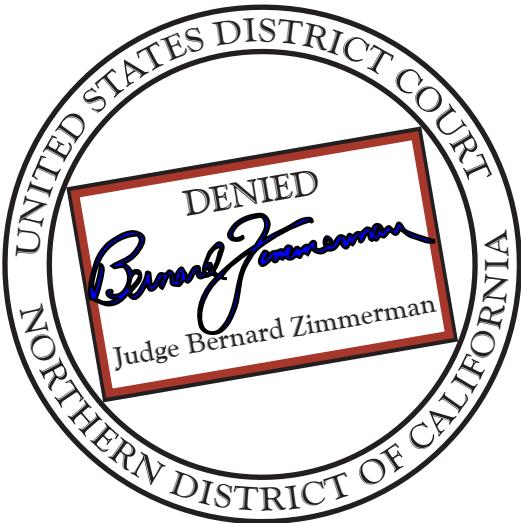
This Court having considered the foregoing motion, hereby grants Defendants' Motion to Strike Plaintiff's Unauthorized Sur-Reply.

IT IS SO ORDERED.

Date August 17, 2009.

## Honorable Bernard Zimmerman

## United State Magistrate Judge



## **DENIED AS MOOT**

1                   **DECLARATION OF JANELLE A. WEBER**  
2

3 I, JANELLE A. WEBER, declare as follows:

4         1. I am an attorney at law duly admitted to practice *pro hac vice* before the United  
5                   States District Court for the Northern District of California and duly admitted to  
6                   practice before the courts of the State of Florida and State of New York. I am an  
7                   attorney of record for Defendants, Mach II Aviation, Inc. and Escape Velocity of  
8                   Tampa Bay, Inc. in the above-captioned matter.

9         2. I make this declaration in support of Defendants' Motion to Strike Plaintiff's  
10                  Unauthorized Sur-Reply. I have personal knowledge of the matters set forth  
11                  herein and, if called as a witness, I could and would competently testify thereto.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Dated: June 5, 2009  
14  
15  
16                   /S/ Janelle A. Weber  
17                   Janelle A. Weber  
18

1                   **CERTIFICATE OF SERVICE**

2       I, JANELLE A. WEBER, certify under penalty of perjury that the foregoing was served  
3 on the interested parties below, via the Court's Electronic Case Filing Program and/or United  
4 States Mail on June 5, 2009.

5                   /S/ Janelle A. Weber  
6                   Janelle A. Weber

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